Wangsa Mujur Sdn Bhd v The Superintendent Lands and Surveys Miri Division, Sarawak and other applications

HIGH COURT (MIRI) — LAND REFERENCE NOS 15–01 OF 2009(MR)/1, 15–02 OF 2009(MR)/2 AND 15–03 OF 2009(MR)/1
RHODZARIAH BUJANG J
24 FEBRUARY 2012

Land Law — Acquisition of land — Acquisition by state authority — Compensation — Land belonged to oil palms plantation owners — Market value of acquired land — Lands held on provisional and proper leases — Whether plantation owners entitled to compensation — Whether claim for compensation based on market value of land — Whether method of valuation should be adopted by court

In the three land references, all three objectors were oil palms plantation owners. Part of their plantation lands were acquired in 2007 by the state government. Wangsa Mujur Sdn Bhd and Jayamax Plantation held their plantation lands under provisional leases while Saremas Sdn Bhd's title to the land was a proper lease. However, the Superintendent of Lands and Surveys Miri did not in all three cases gave compensation for the market value of the acquired land, reasoning that the plantation owners were not entitled to it because their titles were only provisional leases. Therefore, the objectors' claimed for compensation for the market value of the land. The other common fact present in all three cases was the method of valuation adopted by the Superintendant of Lands and Survey, which was to award RM48 per oil palm tree on the acquired land. As contended by their valuer, the rate was based on their crop compensation table. The private valuers engaged by the objectors in these three cases recommended that the method of valuation to be adopted by court should be the investment method and discounted cash flow method as reflecting the true market value of the land, against the per tree crop compensation of the respondent's.

Held:

(1) The court rejected both methods of valuation canvassed by the private valuers. The projections and variables needed to be incorporated into it to arrive at the analysed market value of the land based on the self-serving data supplied by the objectors to their valuer with respect to their oil palms production and income, which were necessary for the computation rendered the method undesirable (see paras 11–13).

(2) The time-honored and tested method of land valuation, ie the

comparable sales method could still be used, with necessary adjustments and modifications, in these three cases. Although the statistics on these sales incorporated in the valuation reports of the objectors were not sales of plantation land but rather the sales of equities in oil palms plantation companies, this was still the fairest method to adopt. Although the sales involved equities in the companies, they were likewise oil palm plantation owners and the sale and purchase price of the shares in the companies must necessarily be influenced by the very business they were in and their main assets which were plantation lands (see para 14).

(3) The lease issued to the objectors contained a condition on the right of way to be given over the land to the government and the respondent's argument was that the gas pipeline project was considered a right of way over the land. The court could not accept the argument that there should be no compensation for the land acquired, only the crops because that project could not in any way be construed as a right of way over the land which was a right of access over the land. The gas pipeline project was definitely not an access through the land (see para 19).

(4) Removal cost had been paid for the wooden bridges, which was fair because they were removable. As for the other items, except severance, the objectors' valuer confirmed that these items were not in existence at the date of acquisition. For severance of the land claimed at 10% of the value of the land, it should be disallowed as evidence was led during the trial that the gas pipelines were under ground and the objectors still had access to their land from the acquired land over which the pipes were laid. Furthermore, as pointed out by the court's assessor, there should have been a 'before' and 'after' valuation of the land to determine the damage caused by severing the plantation land into two because of the acquisition. It was not done in this case. Therefore, it was not fair to give compensation for the severance factor on the assumption that it had caused damage which had not been taken into account in the other compensations paid to the objectors (see para 22).

[Bahasa Malaysia summary

Dalam tiga rujukan tanah ini, ketiga-tiga pembantah merupakan pemilik-pemilik ladang kelapa sawit. Sebahagian daripada tanah-tanah ladang mereka telah diambil pada tahun 2007 oleh kerajaan negeri. Wangsa Mujur Sdn Bhd dan Jayamax Plantation telah memegang tanah-tanah ladang mereka di bawah pajakan sementara manakala hak milik Saremas Sdn Bhd adalah pajakan penuh. Walau bagaimanapun, Pentadbir Tanah dan Ukur Miri tidak, dalam ketiga-tiga kes, memberi pampasan berdasarkan nilai pasaran tanah yang diambil, dengan alasan bahawa pemilik-pemilik ladang tersebut tidak berhak ke atasnya kerana hak milik-hak milik mereka hanya pajakan sementara. Dengan itu, pembantah-pembantah menuntut bagi pampasan berdasarkan nilai pasaran tanah. Satu lagi fakta yang sama dalam ketiga-tiga kes

adalah adalah cara penilaian yang diguna pakai oleh Pentadbir Tanah dan Ukur, iaitu dengan mengawardkan RM48 per pokok kelapa sawit ke atas tanah yang diambil. Seperti yang dihujahkan oleh penilai mereka, purata tersebut adalah berdasarkan jadual pampasan tanaman. Penilai-penilai persendirian yang diambil oleh pembantah-pembantah dalam ketiga-tiga kes mencadangkan agar cara penilaian yang diguna pakai oleh mahkamah mestilah cara pelaburan dan cara aliran kewangan kerana ia mencerminkan nilai pasaran sebenar tanah tersebut, berbanding dengan pampasan sebatang pokok tanaman responden.

Diputuskan:

(1) Mahkamah menolak kedua-dua cara yang disandarkan oleh penilai-penilai persendirian. Unjuran dan pembolehubah-pembolehubah mestilah digabungkan untuk mendapat nilai pasaran tanah yang dianalisa berdasarkan data kepentingan sendiri, disediakan oleh pembantah-pembantah kepada penilai mereka bagi penghasilan dan pendapatan minyak kelapa sawit, yang mana perlu bagi pengiraan untuk menjadikan cara tersebut tidak diperlukan (lihat perenggan 11–13).

(2) Kaedah *time-honored* dan pengujian penilaian tanah, iaitu cara membezakan jualan masih boleh diguna pakai, dengan penyesuaian dan pengubahsuaian, dalam ketiga-tiga kes. Walaupun statistik bagi jualan-jualan yang digabungkan dalam laporan penilaian pembantah-pembantah bukanlah jualan tanah ladang tetapi sebenarnya jualan ekuiti dalam syarikat-syarikat ladang minyak sawit, kesemuanya juga pemilik-pemilik ladang minyak sawit dan harga jual beli syer-syer dalam syarikat semestinya dipengaruhi perniagaan mereka dan aset-aset utama mereka iaitu tanah-tanah ladang (lihat perenggan 14).

(3) Pajakan yang diberikan kepada pembantah-pembantah mengandungi syarat-syarat bagi hak lalu-lalang yang seharusnya diberikan ke atas tanah kepada kerajaan dan hujahan responden adalah projek saluran paip gas dianggap sebagai hak lalu-lalang ke atas tanah. Mahkamah tidak boleh menerima hujahan bahawa tiada pampasan yang patut diberikan bagi tanah yang diambil, hanya tanaman sahaja kerana projek tersebut tidak boleh dalam apa cara ditafsirkan sebagai hak lalu-lalang ke atas tanah yang sebenarnya hak masuk ke atas tanah. Projek saluran paip gas tersebut sememangnya bukan satu kemasukan ke tanah (lihat perenggan 19).

(4) Kos penyingkiran telah dibayar untuk jambatan kayu, yang mana adalah adil kerana kesemuanya boleh ditanggalkan. Bagi item-item lain, kecuali pemisahan, penilai-penilai pembantah mengesahkan bahawa item-item ini tidak wujud pada tarikh pengambilan. Untuk pemisahan tanah yang dituntut pada 10% daripada nilai tanah tersebut, ia tidak harus diterima kerana keterangan menunjukkan semasa perbicaraan bahawa saluran

paip-paip gas adalah di bawah tanah dan pembantah-pembantah masih mempunyai akses kepada tanah daripada tanah yang diambil di mana paip telah diletakkan. Tambahan lagi, seperti yang dikemukakan oleh penilai mahkamah, sepatutnya terdapat satu penilaian tanah 'sebelum' dan 'selepas' untuk menentukan kerosakan yang disebabkan oleh pemisahan tanah ladang kepada dua kerana pengambilan. Ia tidak dilakukan dalam kes ini. Dengan itu, adalah tidak adil untuk memberikan pampasan bagi faktor pemisahan dengan andaian bahawa ia telah menyebabkan kerosakan yang mana tidak pernah diambil kira dalam pampasan lain yang dibayar kepada pembantah-pembantah (lihat perenggan 22).]

Notes

For cases on acquisition of state authority, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2114–2116.

Cases referred to

Adnan bin Khamis v PP [1972] 1 MLJ 274, FC (refd)

Perbadanan Kemajuan Kraftangan Malaysia v DW Margaret a/p David Wilson (t/a Kreatif Kraf) [2010] 2 MLJ 713, FC (refd)

PP v Tan Tatt Eek & other appeals [2005] 2 MLJ 685, FC (refd)

Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213, FC (refd)

Legislation referred to

Federal Constitution art 13

Sarawak Land Code (Cap 81) ss 28, 28(1), (2), (3), (4), 56

SY Ma (Kadir, Wong, Ling & Co) in LR No 15–01 of 2009(MR)/1 for the objector.

Siti Norashidah Dollah (Huang & Co) in LR No 15–02 of 2009(MR)/2 for the objector.

Yong See Me (Loke, King, Goh & Partners) in LR No 15–03 of 2009(MR)/1 for the objector.

Ivy Suli Untup (State Legal Officer, State Attorney General's Chambers) in LR No 15–01 of 2009(MR)/1 for the respondent.

Ivy Suli Untup (State Legal Officer, State Attorney General's Chambers) in LR No 15–02 of 2009(MR)/2) for the respondent.

Ivy Suli Untup (State Legal Officer, State Attorney General's Chambers) in LR No 15–03 of 2009(MR)/1 for the respondent.

Rhodzariah Bujang J:

[1] These three land reference cases were heard separately by me but I was moved to write a single judgment for all three due to the overwhelming

common issues and some duplicity of facts in them. Moreover, the three trials were heard in successive days and I fixed final submissions and judgments for all three on the same day. Further, the same two assessors assisted me at the trials of all three cases.

COMMON FACTS, ISSUES AND LAW

[2] All three objectors are oil palms plantation owners. Part of their plantation lands were acquired in 2007 by the state government for the purpose of the Sabah-Sarawak Gas Pipeline Project. Wangsa Mujur Sdn Bhd (LR-15–01 of 2009) and Jayamax Plantation (LR-15–02 of 2009) held their plantation land under provisional leases whilst Saremas Sdn Bhd's title to the land was a proper lease. This fact I need to mention as the Superintendant of Lands and Surveys Miri did not in all three cases gave compensation for the market value of the acquired land, reasoning that the plantation owners were not entitled to it because their titles were only provisional leases.

[3] Though theirs is a proper lease, Saremas Sdn Bhd was also not given any compensation for the land and this had to do with the respondent's stand, errorneous it turned out to be, that the lease issued to Saremas was a provisional one. This stand was stated in the valuation report of the respondent's valuer, Ms Fina Alison ak Jackson Sapun tendered at the trial. However, when she gave evidence and during cross-examination, she agreed that in fact the lease issued to the objector is a proper lease — not provisional. She has further agreed that compensation for the subject land is payable. The only question left is how much.

[4] Thus the objectors' claims for compensation for the market value of the land became an issue before me and the respondent's counsel reliance on the decision of Stephen Chung JC in Miri land reference case number LR-2–of 2010 (jointly heard with two other cases) on the same issue became the focal legal point for me to consider, which I will do presently enough.

[5] The other common fact present in all three cases is the method of valuation adopted by the superintendant of lands and survey, which is to award RM48 per oil palm tree on the acquired land. The rate was based on their crop compensation table, said their valuer but which I am not convinced is a fair method of valuation because no evidence was adduced to justify the blanket rate awarded or how it was derived at. For Wangsa Mujur, the compensation for crops was RM476,496, for Jayamax it was RM249,298 (plus RM321,940.00 for other improvements) and for Saremas it was RM256,349.

Nil compensation for the land

[6] Stephen Chung JC in his land reference case held that the jurisdiction of

the court under s 56 of the Land Code is confined and restricted to the four matters mentioned in that section, viz:

(a) the measurement of the land;

(b) the amount of compensation;

(c) the persons to whom it is payable; and

(d) the apportionment of the compensation among the persons interested.

It does not, according to His Lordship, vest the court with the jurisdiction to decide on any other matters such as acquisition of the land without any compensation or that the compensation was unconstitutional or unlawful. For all these, he continued, a separate action must be filed by the objector. His Lordship also opined that the objector must be bound by their own grounds of objection which he said 'are akin to their pleadings or grounds of appeal'. Therefore, if the grounds of objection did not state the dispute on the nil compensation for the land, the court should not even consider it at the land reference trial.

[7] With respect, I am unable to agree with His Lordship. My view is that the 'amount of compensation' stated in the sub section must mean the sufficiency or otherwise of the compensation and in deciding whether or not the award is sufficient it stands to reason that the court must consider whether the Superintendent had taken into account all relevant factors and used an appropriate and acceptable method of valuation in determining that amount of compensation. His failure to consider any relevant factors, such as the market value of the land, as in these three cases before me would go towards the sufficiency of the award, which in turn would directly influenced 'the amount of compensation' paid.

PROVISIONAL LEASE AND S 28 OF THE LAND CODE

[8] Provisional lease in the Sarawak Land Code is covered by s 28 which provides as follows:

> 28(1) No State land shall be alienated under this Code unless and until the survey of the land has been completed to the satisfaction of the Superintendent:
>
> Provided that, *when the immediate survey of any State land is impracticable, the Superintendent may order that a provisional lease* in Form C in the First Schedule *be executed in favour of the person entitled.*
>
> (2) *Every provisional lease shall specify the approximate extent and area of the land included therein but shall not entitle the holder to a grant or lease of the whole of the area specified.*

(3) Notwithstanding the payment by him of any rent in respect of the area stated, the *registered proprietor of any provisional lease* shall have no right to registration of a lease in Form B in the First Schedule for an area equal to the area stated to be alienated if on survey such area is found not to be available.

(4) *Save where the context otherwise requires, this Code in connection with leases shall apply to provisional leases and references to a lease shall include a provisional lease.* (Emphasis added.)

[9] It is trite law that in interpreting statutory provisions, the courts must first consider the ordinary and literal or natural meanings of the words used in the statute. 'If the meaning of the language be plain and clear, we have nothing to do but to obey it — to administer it as we find it', said Pollock, CB in *Miller v Salomons* 7 Ex 475; 560 as reproduced in *Bindra's Interpretation of Statute*, (6th Ed), [1975] at p 405. This method of construing statutory provisions has been endorsed by the Supreme Court in *Adnan bin Khamis v Public Prosecutor* [1972] 1 MLJ 274, the Federal Court in *Public Prosecutor v Tan Tatt Eek & other appeals* [2005] 2 MLJ 685 and in *Perbadanan Kemajuan Kraftangan Malaysia v DW Margaret a/p David Wilson (t/a Kreatif Kraf)* [2010] 2 MLJ 713.

[10] The words used in s 28 are indeed plain and unambiguous and when I give them their ordinary and natural meaning, what is provisional is not the title to the land but the acreage of land. This is re-emphasised in special conditions (iii) in the provisional lease in which it was stated that the lease holder is only entitled to an area shown by a final survey but not to the area specified in the provisional lease. The fact that the acreage covered under the said lease is provisional means that both he and the government bears an equal risk of an under compensation or an over compensation for the acquisition of the land since the acreage is not definite yet. The risk, in other words, cuts both ways. However, in all these three cases, such a risk is greatly minimized, even obliterated, by the fact that only a portion of the land under the provisional lease had been acquired — not the whole of it. As a title holder the objector has the same proprietary rights over the land as that of a lease holder as is clearly stated in sub-s (4) to s 28 and as is his constitutional right, the deprivation of it must entitle him to compensation.

METHOD OF VALUATION

[11] The private valuers engaged by the objectors in these three cases have recommended that the method of valuation to be adopted by court should be the investment method and discounted cash flow method as reflecting the true market value of the land, against the per tree crop compensation of the respondent's.

[12] It is appropriate for me to state now that I have rejected both methods of valuation canvassed by the private valuers for these reasons.

[13] Although both assessors assisting me at the trial, Hj Radzali Alision, a private valuer and Norhisham bin Shafie, from the Department of Properties and Valuation, have stated that other methods of valuation such as those canvassed above by the private valuers are acceptable for income generating properties, but Norhisham has cautioned that there is still the element of uncertainty in using the discounted cash flow method (as recommended in LR No 15–02 of 2009) as the rate of return is very subjective. He further said, any difference in the figure, even 1% would affect the proposed market value. All these, he opined, even when the court can accept the accuracy of the data used by the valuer in computing the market value using that method, ie the cash inflow and outflow, the price for fresh fruit bunches, yield profile and production cost since in compiling the data there was heavy reliance by the valuer on the information and statistic published by the Palm Oil Research Institute of Malaysia and the Malaysian Palm Oil Board Industry. I heeded the caution expressed by him and in rejecting the investment method (used in the other two cases), I was of the view that the projections and variables needed to be incorporated into it to arrive at the analysed market value of the land based on the self-serving data supplied by the objector to their valuer with respect to their oil palms production and income, (which were necessary for the computation) rendered the method, undesirable.

[14] I have another compelling reason not to use these two methods and that is because, the time-honoured and tested method of land valuation, ie the comparable sales method can still be used, with necessary adjustments and modifications, in these three cases. Although the statistics on these sales (three altogether, ie BHB Plantation, Bahtera Plantation and Sachiew Plantation) incorporated in the valuation reports of the objectors were not sales of plantation land but rather the sales of equities in oil palms plantation companies, I agree with Norhisham that this is still the fairest method to adopt. My reason is because although the sales involves equities in the companies, they are likewise oil palm plantation owners and the sale and purchase price of the shares in the companies must necessarily be influenced by the very business they are in and their main assets which are plantation lands. However, I acknowledge that there may be other factors which may influenced the said price which is why I have decided to deduct a further 20% from the recommended adjusted market value given by Norhisham to reflect that the sales were in respect of the equities in the company. The details on these adjustments would appear below. We both agree that the sale of the Sachiew Plantation in 2004 which worked out to be at RM20,119 per hectares is a good guide, with adjustments to be made for other relevant factors as follows:

(a) LR No 15–01 of 2009.

Norhisham has recommended and I agree with him that there be an upward revision of 20% against the market value of RM20,119 stated above given that Sachiew's oil palms were between five to seven years old at the time of sale whereas that of the objector's were between 12–17 years old. He further added 5% for location as the acquired land is nearer to Niah and Bintulu town but deducted 10% for the size of the land and 5% for building. The resulting market value was therefore RM22,000 per hectare and deducting further the 20% I mentioned earlier, the market value of the land per hectare is RM17,600;

(b) LR No 15–02 of 2009.
Norhisham has recommended, after he analysed the three sales I mentioned earlier that the objector's valuation of RM18,014.82 per hectare is fair and reasonable because when he made an upward adjustment for time in respect of the three sales (30% of BHB, 20% for Bahtera and 10% for Sachiew) the adjusted market value is within the range of RM16,500 per hectare to RM22,000 per hectare. However after deducting the said 20%, the market value of the land here should in my view be RM14,411.85 per hectare; and

(c) LR No 15–03 of 2009.
The adjustments made by Norhisham against the Sachiew sale here is an upward revision of 20% for the age of the oil palm because the oil palms of the objectors had been continuously planted until 2004 but he deducted 5% for size and another 5% for building. He split the value of the land into two — one land for mature crops and another with immature crops with the latter being subjected to another 5% deduction. Thus for the land with mature crops it was RM22,000 per hectare and for immature crops it was RM21,000. Subjecting these values further to a 20%, deduction, I have determined the market value in this case at RM17,600 per hectare and RM16,800 per hectare, respectively, for land with mature and immature crops.

UNCOMMON FACTS IN ISSUE FOR EACH CASE

[15] In addition, there are certain facts which are peculiar to the individual case which I will discuss below.

LR No 15–03 of 2009

Raw value of land

[16] In this case there was a small fraction of the land acquired which was not planted with oil palm trees ie 0.512 hectares.

[17] Hj Razali Alision analysed the three sales of oil palm plantation companies presented as Table 19 in the objector's valuation report. Out of the 21 sales listed therein, three of the sales to him, and I also agree, are relevant, because the plantations are situated in Miri Division ie sale Nos 11, 19 and 20. In his assessment of these sales, the land situated nearer to Miri were sold at RM5,000 per hectare. He opined that the raw market value of the acquired land be determined at RM4,000 per hectare though Norhisham said it should be RM4,500 per hectare following sale No 11. I declined to follow Norhisham's opinion this time round because the RM4,500 per hectare for sale No 11 was in respect of a second sale which affected 10% of the equity of the owner — the first sale was only at RM2,816.94 per hectare. Sale No 19 which was done in 2004 was at RM3,215 per hectare. Thus in my view, RM4,000 is the fair market value of the raw land at the time of acquisition. For the record, the respondent's valuer in her testimony also agreed that RM4,000 is the fair market value for the raw land in the three cases.

[18] Therefore, though not relevant to the other two cases, I must make clear that the same market value for the raw land is applicable to them, in view of the promixity of the plantations to each other in these three cases. This statement I feel compelled to make in case my decision on the provisional lease issue is overturned in the event of an appeal against this decision and which would enable the appellate court, if the market value I have just given is agreeable to them, to deduct if from total compensation payable for the land and crops.

The title condition

[19] The lease issued to the objector contains a condition on the right of way to be given over the land to the government and the respondent's argument is that the gas pipeline project is considered a right of way over the land. Therefore, their counsel submitted, there should be no compensation for the land acquired, only the crops. I cannot accept the argument at all because I simply cannot see how that project can in any way be construed as a right of way over the land which to my understanding is a right of access over the land. The gas pipeline project is definitely not an access through the land.

Other compensation

[20] The objector has also claimed additional compensation for the damage to the fresh fruit bunch ramp but I have decided to disallow the same because the damage occurred after the acquisition of the land and the pepetrator was not the respondent, but Petronas. This was infact agreed by the objector's

valuer during his cross-examination at the trial.

LR No 15–02 of 2009

[21] In addition to the market value of the land, the objector also claimed additional compensation for:

(a) intersection of existing gravel road (main road) and numerous feeder roads with total length of 2.50km in the sum of RM314,200;

(b) intersection of existing two timber log bridges in the sum of RM188,200 and RM201,200 respectively;

(c) cost of construction of existing guard house and bar gate in the sum of RM14,615.55;

(d) cost of construction of existing two-bays timber fresh fruit bench ramp in the sum of RM109,275;

(e) temporary access/road diversion due to the intersection of existing main road and feeder roads with an approximate length of 6.05km in the sum of RM876,234;

(f) construction of two new bridges, culverts due to road diversion in the sum of RM800,000; and

(g) severance (10%) in the sum of RM7,691.61.

[22] However, in the written submission of their counsel, the objector only addressed me on their entitlement to compensation for the value of the land and the market value of the land. I take it therefore the other claims as specified above have been abandoned. If I were wrong in making that assumption, the additional compensation for the items stated above are still not within my purview because as intimated in the evidence of the respondent's valuer, Ms Fina Alison ak Jackson, the guard house and ramp were outside the acquired area. Despite that removal costs were awarded for these items by the superintendent of lands and surveys. Removal cost had been paid for the wooden bridges, which is fair because they are removable. As for the other items, (except severance) the objector's valuer ('OW2') confirmed that these items were not in existence at the date of acquisition. For severance of the land claimed at 10% of the value of the land, I am of the view that it should be disallowed as evidence was led during the trial that the gasline pipes are under ground and the objector still has access to their land from the acquired land over which the pipes were laid. Furthermore, as pointed out by the assessor, Hj Radzali Alision in his written opinion, there should have been a 'before' and 'after' valuation of the land to determine the damage caused by severing the plantation land into two because of the acquisition. It was not done in this case. Therefore, it is not fair to give compensation for the severance factor on the

assumption that it has caused damage which has not been taken into account in the other compensations paid to the objector.

LR No 15–01 of 2009

[23] The peculiar fact in this case is the application to amend the grounds of objection which was filed after the trial has concluded and submissions tendered on 16 December 2011. The objector's notice of motion dated 3 January 2012 was to amend their grounds of objection, by applying it with additional grounds, which I summarised as follows:

(a) that the crops compensation table (used as the basis of compensation (as testified by the respondent's valuer during the trial) has no force of law;

(b) that the nil compensation for the land because it was under a provisional lease (as testified by the respondent valuer during the trial) was wrong; and

(c) that the nil compensation for the land is against art 13 of the Federal Constitution.

[24] This application to amend the grounds of objection at this 11 hour, just nine days short of the date fixed for judgment cannot be said not to prejudice the respondent because the substance of it is to address the points against them raised in submission of the respondent's counsel and/or which was based on the evidence adduced at the trial. It therefore, cannot be said to have been made in good faith within the established principles of allowing amendments to be made as stated in *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd* [1983] 1 MLJ 213.

[25] Thus although an amendment can be made at any stage of the proceeding, to allow it at this time and given the nature of the amendment which, if allowed, would defeat the submission points raised by the respondent's counsel at the conclusion of the trial would cause grave injustice to the respondent, bearing in mind that our trial is based on an adverserial system. I would therefore, dismiss the same with cost of RM2,000 to the respondent.

CONCLUSION AND SUMMARY OF DECISION

[26] I conclude that the awards of compensation made by the respondent in all three cases are inadequate and substitute them with an increased compensation, the summary of which, including the other findings are as follows:

(a) LR No 15–3 of 2009

(i) 39.28 hectares of land with matured oil palm at RM17,600 per hectare: RM691,328;

(ii) 10.67 hectares of land with immatured oil palm at RM16,800 per hectare: RM179,256;

(iii) 0.512 hectares at RM4,000 per hectare: RM2,048;

(iv) claim for compensation of the fresh fruit bunch ramp is disallowed; and

(v) cost of RM10,000 for the objector.
Total compensation: RM872,632;

(b) LR No 15–02 of 2009

(i) 40.351 hectares at RM14,411.85 per hectare: RM581,532.80;

(ii) award of the respondent for other improvements on the land is maintained;

(iii) other additional claims are not allowed; and

(iv) cost of RM10,000 for the objector;

(c) LR No 15–01 of 2009

(i) hectares at RM17,600 per hectare: RM1,242,560;

(ii) notice of motion for amendment is dismissed with cost of RM3,000; and

(iii) Cost of RM10,000 for the objector.

Order accordingly.

Reported by Afiq Mohamad Noor